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JAMES KEE

1 IN THE UNITED STATES DISTRICT COURT FOR THE  
2 WESTERN DISTRICT OF PENNSYLVANIA

3 -----  
4 BURCHICK CONSTRUCTION COMPANY,) )  
INC., ) )  
5 ) )  
Plaintiff, ) Civil Docket No.  
6 ) 05-CV-12E  
vs. ) )  
7 ) )  
HBE CORPORATION, ) )  
8 ) )  
Defendant. ) )  
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10  
11 Deposition of JAMES KEE  
12 (Thursday, September 22, 2005)

13 Filed on behalf of Plaintiff  
14 BURCHICK CONSTRUCTION COMPANY, INC.

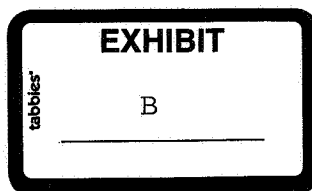
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-- --

1 22,735.40 and the 7,387?

2 A. Because we haven't received final payment  
3 from the owner.

4 Q. That's the only reason?

5 A. That's the contractual reason.

6 Q. Okay. Is that the only reason?

7 A. Actually, there's one other thing.

8 Q. What's that?

9 A. In that what's not reflected here is the  
10 adjustment for the OCIP reconciliation, neither  
11 on this job or on the hospital project. These  
12 amounts are -- I don't believe, I don't believe,  
13 reflect the OCIP reconciliation, because we're  
14 waiting for the information from the  
15 subcontractor.

16 Q. Are there any documents that -- are there  
17 any documents that HBE has that reflect credits  
18 that HBE thinks its owed from Burchick for the  
19 OCIP reconciliation?

20 A. We've developed a work sheet, I guess  
21 that's the best way to characterize it, that  
22 indicates what we believe the credit is worth.

23 Q. I don't have that work sheet, right?

24 A. I don't know.

25 Q. HBE has never produced anything that

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1 shows any alleged credit.

2 A. I can't answer that. I don't know.

3 Q. Okay. All right. So, the total  
4 retainage shows on the last page for the  
5 behavioral health, shows \$53,297.83, right?

6 A. (Nodding head up and down.)

7 Q. I know I already asked you this, I don't  
8 remember what you told me, so I'll ask you again:  
9 I think you said you're not sure how much  
10 retainage --

11 A. I think I said it was approximately  
12 89,000 that the owner was holding. Actually, the  
13 number I said was \$86,000, round numbers.

14 Q. Mr. Kee, I'm going to switch gears a  
15 little bit. I want to ask you about -- there's  
16 an item in the Notice of Deposition that makes  
17 specific reference to a meeting, February 26,  
18 2004 meeting, between representatives of Burchick  
19 and HBE. Do you know what meeting I'm referring  
20 to?

21 A. I believe that's the meeting where I  
22 attended.

23 Q. Okay. Who from HBE attended that  
24 meeting, do you remember?

25 A. I remember Dan Gemme was there, Jon